

<b>Notice of Allowability</b>	Application No.	Applicant(s)
	10/010,247	KORTENBACH ET AL.
	Examiner Bradford C Pantuck	Art Unit 3731

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1.  This communication is responsive to After Final Arguments/Affadavit filed 04/11/2005.
2.  The allowed claim(s) is/are 1-24 and 33-40.
3.  The drawings filed on \_\_\_\_\_ are accepted by the Examiner.
4.  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a)  All
  - b)  Some\*
  - c)  None
 of the:
  1.  Certified copies of the priority documents have been received.
  2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3.  Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.  
**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

5.  A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
6.  CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.
  - (a)  including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948) attached
    - 1)  hereto or 2)  to Paper No./Mail Date \_\_\_\_\_.
  - (b)  including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7.  DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

1.  Notice of References Cited (PTO-892)
2.  Notice of Draftsperson's Patent Drawing Review (PTO-948)
3.  Information Disclosure Statements (PTO-1449 or PTO/SB/08),  
Paper No./Mail Date \_\_\_\_\_
4.  Examiner's Comment Regarding Requirement for Deposit  
of Biological Material
5.  Notice of Informal Patent Application (PTO-152)
6.  Interview Summary (PTO-413),  
Paper No./Mail Date \_\_\_\_\_.
7.  Examiner's Amendment/Comment
8.  Examiner's Statement of Reasons for Allowance
9.  Other \_\_\_\_\_.

#### **EXAMINER'S AMENDMENT**

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Gregory L. Mayback on April 27, 2005.

The application has been amended as follows:

In claim 39, line 8, --wholly proximal to the distal end of said clevis and—has been inserted between the words “linkage” and “having”.

In claim 39, line 10, “rotatably” has been deleted and –pivotally—inserted in its place.

In claim 40, line 8, --wholly proximal to the distal end of said clevis and—has been inserted between the words “linkage” and “having”.

In claim 40, line 10, “rotatably” has been deleted and –pivotally—inserted in its place.

Claims 25-32 have been cancelled. These claims were withdrawn in the Final Rejection dated 11/25/2003 as the examined claims were elected by original presentation. Applicant preserves the right to file these claims in one or more divisional applications.

#### ***Allowable Subject Matter***

2. The following is an examiner's statement of reasons for allowance of claims 1-14: None of the prior art of record, alone or in combination, discloses a surgical clip applier having a

clevis, two jaws having teeth/respective anvils, and a channel in one of the jaws extending longitudinally *adapted to slidably apply a surgical clip*, as set forth by Applicant. In the DECLARATION under 37 C.F.R. section 1.132, Juergen A. Kortenbach declares accurately that his patent (US 5,707,392) does not disclose a forceps capable of holding and advancing a clip, according to the limitations of claims 1 and 10 of the currently pending application.

3. The following is an examiner's statement of reasons for allowance of claims 15-24 and 33-38: None of the prior art of record, alone or in combination, discloses an endoscopic surgical instrument having an end effector, a clevis, and a *linkage for increasing mechanical advantage* having two separate elements, as set forth by the applicant. A linkage is a *system* of interconnected machine elements, such as rods, springs, and pivots, *used to transmit power or motion*, and U.S. Patent No. 5,707,392 to Kortenbach discloses no such linkage. In Kortenbach's invention, forceps jaw (51/58/60) is a *unitary member*.
4. The following is an examiner's statement of reasons for allowance of claims 39 and 40: None of the prior art of record, alone or in combination, discloses the combination of a hollow member, clevis, end effector, pull/push wire, a linkage wholly proximal to the distal end of the clevis, and a rotating element pivotally coupled to the clevis, as set forth by the Applicant. Griffith's (US 6,238,414 B1) linkages (47/48/52/53) are located generally distally of the distal end of the clevis (shown clearly in Fig. 13). Brinkerhoff's (US 5,354,312) linkages (66/68) also extend distally of the distal end of clevis (65).

### ***Conclusion***

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Patent No. 5,312,434 to Crainich

U.S. Patent No. 6,238,414 B1 to Griffiths

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bradford C Pantuck whose telephone number is (571) 272-4701. The examiner can normally be reached on M-F 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan Nguyen can be reached on (571) 272-4963. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*BCP*  
BCP  
April 27, 2005

*ANHTUANT. NGUYEN*  
SUPERVISORY PATENT EXAMINER

*4/30/05*